

Title	Small Claims Rules on Appeal (amend Cal. Rules of Court, rules 151—157, Division III, Trial of Small Claims Cases on Appeal)
Summary	The outdated small claims rules on appeal would be revised to reflect the small claims de novo appeal in a post-unified court system and to make other technical and clarifying amendments.
Source	Judicial Council’s Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>The rules for trial de novo of small claims cases on appeal still refer to an appeal “from municipal and justice courts.” This language is outdated because all courts are now one unified superior court and would be corrected.</p> <p>References in the text to “trial court” would be replaced with “small claims court.” Although the small claims court is part of the superior court, this new text tracks the language in the Small Claims Act under Code of Civil Procedure section 116.210, which states:</p> <p style="padding-left: 40px;">In each superior court there shall be a small claims division. The small claims division may be known as the small claims court.</p> <p>Rule 153 has been amended to delete the requirement for transmittal of a certified copy of the record and replace it with transmittal of “the file and all related papers,” because transmittal is occurring within the same superior court and therefore no longer requires transfer of the certified record to another court. The records would be transmitted to the clerk of the “court assigned to hear the appeal” instead of the “superior court,” to distinguish the small claims trial court from the court division hearing the small claims appeal. The committee in particular seeks comment on this change and whether the records should instead be transmitted to the “division” or “department” that is “assigned to hear the appeal.”</p> <p>Stylistic changes would be made, including changing “shall” to “must,” to conform to current policy for drafting rules of court.</p> <p>The definitions under rule 156 may no longer be necessary because several are already governed by other rules of court (e.g., definitions under subdivisions (b) and (e) are governed by rules 200.2 and</p>

200.1(8) respectively). The committee seeks comment on whether the definitions should be retained or deleted from this division.

Attachments

Rules 151—157 of the California Rules of Court would be revised, effective January 1, 2005, to read:

1 **CHAPTER III DIVISION III**

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3 **Trial of Small Claims Cases on Appeal ~~From Municipal and Justice Courts~~**

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6 **Rule 151. Scope**

7 This chapter applies to appeals ~~to the superior court from municipal and justice~~
8 ~~courts~~ in small claims cases.

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10 **Rule 152. Filing notice of appeal**

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12 (a) [Small claims case] A notice of appeal ~~shall~~ must be signed by the appellant or by
13 appellant's attorney and ~~shall be~~ is sufficient if it states in substance that the
14 appellant appeals from a specified judgment or, in the case of a defaulting
15 defendant, from the denial of a motion to vacate judgment. A notice of appeal
16 ~~shall~~ must be liberally construed in favor of its sufficiency.

17 (b) [Notification by clerk] When a notice of appeal is filed ~~pursuant to subdivision~~
18 ~~(a) of this rule,~~ the clerk of the ~~trial~~ small claims court ~~shall~~ must promptly mail a
19 notification of the filing of the notice to each other party at the party's last known
20 address. The notification ~~shall~~ must state the number and title of the action or
21 proceeding and the date the notice of appeal was filed. In the event of the death of
22 a party prior to the court's giving notice, the mailing is a sufficient performance of
23 the clerk's duty. The failure of the clerk to give notice of judgment or notification
24 of the filing of notice of appeal shall not extend the time for filing notice of appeal
25 or affect the validity of the appeal.

26 (c) [Premature notice] A notice of appeal filed ~~prior to~~ before entry of the judgment,
27 but after its rendition ~~shall be~~ is valid and ~~shall be~~ is deemed to have been filed
28 immediately after entry. A notice of appeal filed ~~prior to~~ before rendition of the
29 judgment, but after the judge has announced an intended ruling, may, in the
30 discretion of the reviewing court for good cause, be treated as filed immediately
31 after entry of the judgment.

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33 **Rule 153. Record on appeal**

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35 Upon the filing of the notice of appeal and the payment of any fees required by law,
36 the clerk of the ~~trial~~ small claims court ~~shall~~ must within five days transmit the file
37 and all related papers including the notice of appeal to the clerk of the superior court
38 assigned to

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2 ~~hear the appeal. a certified copy of the entries in the register of actions or docket~~
3 ~~relating to the action, together with the pleadings, exhibits, notices, motions, other~~
4 ~~papers and documents filed in the action, and notice of appeal.~~

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6 **Rule 154. Continuances**

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8 Continuances of the trial in the ~~superior~~ court assigned to hear the appeal may be
9 granted for good cause but, except in cases of extreme hardship, ~~shall~~ may not be
10 granted, on application of the appellant alone, for a period of time which in the
11 aggregate exceeds 30 days. If after trial anew ~~or new trial~~ a new trial is ordered, ~~there~~
12 ~~shall be~~ a similar limitation on continuances applies.

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14 **Rule 155. Abandonment, dismissal, and judgment for failure to bring to trial**

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16 (a) **[Before appeal filed]** At any time before the filing of the appeal ~~in the superior~~
17 ~~court~~, the appellant may file in the office of the clerk of the ~~trial~~ small claims court
18 a written abandonment of the appeal; or the parties may file in that office a
19 stipulation for abandonment. The filing of either document ~~shall~~ operates to
20 dismiss the appeal and to restore the jurisdiction of the ~~trial~~ small claims court.

21 (b) **[After record filed]** After the filing of an appeal ~~in the superior court~~ it may be
22 dismissed by that court on written request of the appellant or stipulation of the
23 parties filed with the clerk of the ~~superior clerk~~ court assigned to hear the appeal.

24 (c) **[Dismissal or judgment by court]** The appeal ~~shall~~ must be dismissed if not
25 brought to trial within one year ~~from~~ after the date ~~of filing~~ the appeal is filed. ~~in~~
26 ~~the superior court~~. If after trial anew a new trial is ordered, the appeal in the case
27 ~~shall~~ must be dismissed if the case if not brought to trial within one year ~~from~~ after
28 the date of entry of the order for the new trial. Notwithstanding the foregoing
29 provisions, dismissal ~~shall~~ must not be ordered or judgment entered if there was in
30 effect a written stipulation extending the time for the trial or if the appellant shows
31 that he or she exercised reasonable diligence to bring the case to trial. In any
32 event the appeal ~~shall~~ must be dismissed, if the case is not brought to trial within
33 three years after either the appeal is filed ~~in the superior court~~ or the most recent
34 new trial order is entered in the ~~superior~~ court assigned to hear the appeal.

35 (d) **[Notification by clerk]** When an appellant files an abandonment of appeal, the
36 clerk of the court in which the abandonment is filed ~~shall~~ must immediately notify
37 the adverse party or parties of the filing. The clerk of the ~~superior clerk~~ shall
38 court assigned to hear the appeal must immediately notify the parties of any order
39 of dismissal or of any judgment for defendant made by the court pursuant to
40 ~~subdivision (c)~~ made by that court.

41 (e) **[Return of papers]** Upon dismissal ~~by the superior court~~ of an appeal ~~from a~~
42 ~~municipal or a justice court~~, the clerk of the ~~superior~~ court assigned to
43 hear the

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3 appeal ~~shall~~ must transmit to the ~~trial~~ small claims court a copy of the order of
4 dismissal and all original papers and exhibits transmitted to the ~~superior~~ court
5 assigned to hear the appeal. Thereafter ~~The trial small claims court shall~~
6 ~~thereafter have~~ has the same jurisdiction as if no appeal had been taken.

- 7 (f) [Approval of compromise] Whenever the guardian of a minor or of an insane or
8 incompetent person seeks approval of a proposed compromise of a case on appeal
9 required to be tried anew or in which a new trial has been ordered, the ~~superior~~
10 court assigned to hear the appeal may hear and determine whether the proposed
11 compromise is for the best interest of the ward.
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13 **Rule 156. Definitions**

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15 In this chapter, unless the context or subject matter otherwise requires:

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17 (a) The past, present, and future tenses each include the other; the masculine,
18 feminine, and neuter genders each include the other; and the singular and plural
19 numbers each include the other.
20 (b) ~~“Shall”~~ “Must” is mandatory and “may” is permissive.
21 (c) “Trial Small claims court” means the ~~municipal or justice~~ trial court from which
22 the appeal is taken.
23 (d) “Appellant” means the party appealing; “plaintiff” and “defendant” refer to the
24 parties as they were designated in the ~~trial~~ small claims court.
25 (e) Designation of a party by any terminology includes such party’s attorney of
26 record. Whenever under this chapter notice is required to be given to or served on
27 a party, the notice or service ~~shall~~ must be made upon the attorney or record if the
28 party has one.
29 ~~(f) “Clerk” with respect to a justice court means the judge if there is no clerk~~
30 (f) Rule and subdivision headings do not in any manner affect the scope, meaning, or
31 intent of the provisions of these rules.
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33 **Rule 157. Examination**

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